

Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the
case.

ATTORNEYS FOR APPELLANT:

STEVEN D. ALLEN
JOSEPH M. CLEARY
Hammerle & Allen
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES LAUGHNER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 49A05-0608-CR-425

PPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0512-CM-218492

February 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Charles Laughner appeals his conviction for Operating a Vehicle While Intoxicated,¹ a class A misdemeanor. He presents the following restated issue for review: Did the State present sufficient evidence to support his conviction?

We affirm.

The facts favorable to the conviction reveal that on December 18, 2005, at approximately 3:51 a.m., Trooper Justin Hobbs of the Indiana State Police was dispatched to an accident on I-465 in Marion County. Upon his arrival, Trooper Hobbs observed a stationary vehicle obstructing the left and center lanes of traffic. The vehicle was still running, and Laughner was standing in the roadway just outside the driver's side door of his vehicle.² It appeared to Trooper Hobbs that Laughner's vehicle had struck the median barrier on the left shoulder before coming to rest in the roadway. This was later confirmed by Laughner.

As Trooper Hobbs approached Laughner, he detected an "extremely strong odor" of alcoholic beverage emanating from Laughner's person. *Transcript* at 17. Trooper Hobbs then immediately read Laughner his *Miranda* rights. Hobbs noted that Laughner's eyes were red, glassy, and bloodshot. As he spoke with Laughner, Hobbs observed Laughner's speech was slurred, his breath had a strong odor of alcoholic beverage, and his balance was unstable.

Trooper Hobbs observed a "minor cut" on the back of Laughner's head that was bleeding a little bit and called for an ambulance, despite Laughner's claims that he was

¹ Ind. Code Ann. § 9-30-5-2 (West 2004).

² There was also a witness stopped at the scene, who did not appear at trial.

fine.³ *Transcript* at 18. Emergency personnel dressed the cut on the scene, and Laughner refused further medical treatment.

Thereafter, Trooper Hobbs spoke with Laughner regarding the accident. Laughner acknowledged driving the vehicle and indicated that there had been no other occupant in his vehicle during the crash. Laughner indicated that he had lost control of the vehicle and struck the median barrier wall. He also acknowledged that he had been drinking. Based on his training and experience, Trooper Hobbs believed Laughner was “intoxicated, absolutely.” *Id.* at 14.

Trooper Hobbs asked Laughner to submit to three standardized field sobriety tests. Laughner refused. He then asked whether Laughner would take a portable breath test, which Laughner similarly refused. At that point, Hobbs read Laughner Indiana’s implied consent law. Laughner, however, refused to submit to a chemical test.

That same day, Laughner was arrested and charged with operating a vehicle while intoxicated and public intoxication. At his bench trial on May 24, 2005, the trial court found Laughner guilty as charged but then immediately vacated the conviction for public intoxication. On June 28, 2006, the trial court sentenced Laughner to 365 days in jail, with all but 10 days suspended to probation. Laughner now appeals, challenging the sufficiency of the evidence supporting his conviction for operating while intoxicated.⁴

³ On appeal, Laughner asserts that his head injury was “somewhat serious” and that he was later taken to the hospital where he received thirteen staples in the back of his head. *Appellant’s Brief* at 6. This evidence, however, was not presented at the guilt-phase of Laughner’s trial.

Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor assess the credibility of the witnesses. *Overstreet v. State*, 783 N.E.2d 1140 (Ind. 2003). Rather, we look to the evidence most favorable to the judgment and draw reasonable inferences therefrom. *Id.* The conviction will be upheld if there is substantial evidence of probative value from which the trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* In other words, we will not substitute our judgment for that of the trier of fact, and the claim of insufficient evidence will prevail only if no reasonable trier of fact could have found Laughner guilty beyond a reasonable doubt. *See Ritchie v. State*, 809 N.E.2d 258 (Ind. 2004).

In order to convict Laughner of operating a vehicle while intoxicated, as a class A misdemeanor, the State was required to prove that he: 1) operated a motor vehicle; 2) while intoxicated;⁵ 3) in a manner that endangered a person. I.C. § 9-30-5-2. The testimony of Trooper Hobbs (the only witness at trial) sufficiently established each of these elements.

At the scene, Laughner stated to Trooper Hobbs that he had been driving when he lost control of the vehicle and struck the median barrier wall. The evidence establishes that, after the collision, the vehicle came to rest in the middle of the interstate, obstructing two lanes of traffic. Laughner received an injury to the back of his head as a result of the

⁴ Laughner also challenges his conviction for public intoxication. As set forth above, however, the trial court expressly vacated the conviction for public intoxication and did not sentence Laughner on that count. Therefore, we do not address this asserted error.

⁵ “Intoxicated” means under the influence of alcohol so that there is an impaired condition of thought and action and the loss of normal control of a person’s faculties. Ind. Code Ann. § 9-13-2-86 (West, PREMISE through 2006 2nd Regular Sess.).

single-car collision. These facts establish that Laughner operated the vehicle and he endangered himself, as well as others. *See Blinn v. State*, 677 N.E.2d 51 (Ind. Ct. App. 1997) (endangerment is proved by evidence showing that the defendant's condition or operating manner could have endangered any person, including the public, the police, or the operator).

With respect to intoxication, Trooper Hobbs testified that Laughner admitted he had been drinking. Trooper Hobbs smelled a strong odor of alcohol emanating from Laughner's breath. Further, Trooper Hobbs testified that Laughner had glassy and bloodshot eyes, slurred speech, and unsteady balance. This is sufficient evidence of Laughner's intoxication. *See Luckhart v. State*, 780 N.E.2d 1165 (Ind. Ct. App. 2003) (finding sufficient evidence of intoxication where officers observed that defendant smelled of alcohol, had bloodshot eyes and slurred speech, and was having difficulty balancing himself), *disapproved of on other grounds, Ham v. State*, 826 N.E.2d 640 (Ind. 2005).⁶ While Laughner offers possible alternative explanations for his unsteady balance, slurred speech, and red, watery eyes, we decline his request to reweigh the evidence.

Finally, Laughner argues the State failed to prove that he was intoxicated at the time he operated his vehicle. He directs us to *Flanagan v. State*, 832 N.E.2d 1139 (Ind.

⁶ The State cites *Luckhart* and I.C. § 9-30-6-3(b) (West 2004) for the proposition that Laughner's refusal to take any field sobriety tests or submit to a chemical test may be considered as evidence of intoxication. On the contrary, our Supreme Court has expressly disapproved of *Luckhart* in this regard and has stated: "We first observe that Indiana Code § 9-30-6-3 only says that a refusal is admissible into evidence, not that it is evidence of intoxication. Judge Baker was correct to say that 'such evidence is probative only to explain to the jury why there were no chemical test results.'" *Ham v. State*, 826 N.E.2d at 642 (quoting *Ham v. State*, 810 N.E.2d 1150, 1154 (Ind. Ct. App. 2004)).

Ct. App. 2005) in support of this temporal argument. In *Flanagan*, a law enforcement officer observed Flanagan and another individual standing outside a disabled vehicle on the side of the roadway. The officer was transporting a prisoner and, therefore, could not stop to assist the men. After transporting the prisoner, the officer returned to the disabled vehicle. By this time, the men had started walking toward a local convenience store. The officer stopped and offered the men a ride, which they accepted. Thereafter, the officer determined that Flanagan was intoxicated. Upon further inspection, empty beer cans were found in the backseat of the disabled vehicle. Flanagan did not dispute that he was intoxicated, and admitted driving the vehicle earlier in the day. Flanagan, however, was successful on appeal because the evidence at trial did not establish when he had consumed the alcohol or that he had operated the vehicle while intoxicated. We found that, “it could be that Flanagan consumed beer after the vehicle broke down, and when the beers were all gone, the men decided to venture to a nearby store to call for assistance.” *Id.* at 1141.

The instant case is distinguishable from *Flanagan*. Here, the evidence presented at trial supports a reasonable inference that Laughner was intoxicated at the time he drove his vehicle into the median wall. Trooper Hobbs responded to the accident scene, where he found Laughner’s vehicle still running but stopped in the middle of the interstate, obstructing two lanes of traffic. The injured Laughner was standing in the roadway, just outside of his vehicle. There was also a witness present. In light of the totality of the evidence, it is reasonable to infer that the accident had just recently occurred, with Trooper Hobbs responding quickly to the scene. Unlike in *Flanagan*, there is simply no

evidence to indicate that Laughner may have become intoxicated after he stopped driving (that is, after he collided with the median wall). Therefore, we conclude that the evidence was sufficient to support Laughner's conviction for operating a vehicle while intoxicated, as a class A misdemeanor.

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.